

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

George D. Fitzgerald,
Plaintiff,

v.

Civil Action No. 2:09-CV-139

Vermont State Trooper
Jay Riggen,
Defendant.

ORDER

On July 21, 2009 defendant Jay Riggen filed a Motion to Dismiss the reckless endangerment and aggravated assault causes of action which are set forth in the Complaint as State Causes of Action Counts 2 and 3, arguing that there is no corresponding civil cause of action for these statutory crimes. Alternatively, Riggen contends that the aggravated assault cause of action is duplicative of count 1 and the reckless endangerment allegation lacks an essential element. (Doc. 4.) Plaintiff filed no response to the Motion.

On September 25, 2009 a Report and Recommendation was issued, recommending that the Motion to Dismiss be granted. The Report and Recommendation (Doc. 10) was issued because neither side at the time had complied with Local Rule of Procedure 73.1(b), which requires parties to indicate their consent or objection to the direct assignment of a case to a Magistrate Judge pursuant to 28 U.S.C. § 636(c).

Since the issuance of the Report and Recommendation, both parties have filed consents to proceed before the Magistrate Judge. (Doc. 11 and 12.)

Accordingly, the Report and Recommendation is adopted as the Opinion and Order of the Court. For the reasons set forth in the Report and Recommendation, the defendant's unopposed Motion to Dismiss (Doc. 4) is GRANTED and Counts 2 and 3 of the State Causes of Action are DISMISSED.

It is further ORDERED that defendant Rigen file an answer or other responsive pleading on the remaining counts within twenty days of the date of this Order.

Dated at Burlington, in the District of Vermont, this 19th day of October, 2009.

/s/ John M. Conroy

John M. Conroy

United States Magistrate Judge